



New South Wales

Public Interest Disclosures Amendment (Extension of Protections) Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to extend the protections from adverse consequences that the *Public Interest Disclosures Act 1994* provides for those persons who make disclosures in the public interest about public sector wrongdoing. This is achieved by:

- (a) extending those protections to all persons making disclosures (and removing the current limitation that only public officials can be protected), and
- (b) expanding the type of public sector wrongdoing about which a person can make a disclosure and be protected from adverse consequences, and extending the requirements to investigate and deal with disclosures about such wrongdoing, so as to include the following:
 - (i) scientific misconduct by public authorities or their officers,
 - (ii) acts or omissions of public authorities or their officers that create risks to the environment (including the carrying on of activities in an environmentally unsatisfactory manner),
 - (iii) acts or omissions of public authorities or their officers that create risks to public health or safety (or both), and
- (c) extending the circumstances in which a public interest disclosure made directly to a journalist or member of Parliament will be protected, so as to include circumstances when a person could not first report to any other investigating authority or body (as is currently required), and
- (d) further protecting those who make public interest disclosures against detrimental action being taken or threatened against them:

- (i) by making it an offence whenever detrimental action is taken or threatened against a person for reasons that include reprisal for the fact that the person made a disclosure (and not only when the detrimental action was taken substantially in reprisal for making of the disclosure, as at present), and
- (ii) similarly, by allowing civil remedies for compensation to be pursued for damages for any loss, damage or injury suffered as a result of detrimental action taken or threatened for reasons that include reprisal for the making of a disclosure (and not only when the detrimental action was taken substantially in reprisal for the detrimental action, as at present), and
- (iii) by allowing those civil remedies to be pursued in the Industrial Relations Commission.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act 3 months after the date of assent to the proposed Act, unless it is commenced sooner by proclamation.

Schedule 1 Amendment of Public Interest Disclosures Act 1994 No 92

Extension of protections from adverse consequences to disclosures made by persons who are not public officials

Schedule 1 [1] amends the long title of the Act to reflect its extension (by other amendments made by **Schedule 1**) so as to protect the disclosures of all persons, and not just public officials.

Schedule 1 [18] makes it clear that any person may make a disclosure that may be protected by the Act, whether or not the person is a public official. The amendment also provides that a disclosure may be protected by the Act even if it is made anonymously.

Schedule 1 [11], [15]–[17], [19], [20], [22]–[24], [28]–[30] and [37]–[40] make consequential amendments to reflect the extension of the Act to the disclosures of all persons.

Extension of possible subject matter of protected disclosures to include those about scientific misconduct or environmental, public health or public safety risks

Schedule 1 [2] amends the long title of the Act to reflect the extension of the Act (by other amendments made by **Schedule 1 [4], [25] and [27]**) to disclosures that a public authority or any officer of a public authority:

- (a) is or has been involved in scientific misconduct, or
- (b) is or has been involved in conduct or inaction that results in a danger to the environment or results in, or increases, a risk of danger to the environment (including by carrying on an activity in an environmentally unsatisfactory manner), or
- (c) is or has been involved in conduct or inaction that results in a danger to public health or safety (or both) or results in, or increases, a risk of danger to public health or safety (or both).

Schedule 1 [3] amends the object of the Act to reflect that the Act is no longer limited to corruption, maladministration, waste and contraventions relating to access to information and disclosure of pecuniary interests, but extends to disclosures about scientific misconduct and environmental, public health and public safety risks.

Schedule 1 [4] provides that scientific misconduct is an aspect of corrupt conduct.

Schedule 1 [6] and [10] insert definitions relating to the extension of the Act to disclosures about scientific misconduct and environmental, public health or public safety risks.

Schedule 1 [7]–[9] update definitions as a consequence of the roles created for the Environment Protection Authority by the extension of the Act to environmental risks.

Schedule 1 [12], [26] and [37]–[39] are consequential on the extension of the Act to disclosures about environmental risks.

Schedule 1 [13] and [14] provide for the representation of the Environment Protection Authority on the Public Interest Disclosures Steering Committee as a consequence of the role created for the Environment Protection Authority by the extension of the Act to disclosures about environmental risks.

Schedule 1 [25] provides for disclosures to be protected if they are made to the Ombudsman and disclose that a public authority, or any officer of a public authority acting, or purporting to act, in his or her official capacity, is or has been involved in conduct or inaction that results in a danger to public health or safety (or both) or results in, or increases, a risk of danger to public health or safety (or both).

Schedule 1 [27] provides for disclosures to be protected if they are made to the Environment Protection Authority and disclose that a public authority, or any officer of a public authority acting, or purporting to act, in his or her official capacity, is or has been involved in conduct or inaction that results in a danger to the environment or results in, or increases, a risk of danger to the environment (including by carrying on an activity in an environmentally unsatisfactory manner).

Schedule 2.8 and 2.11 amend the *Ombudsman Act 1974* and the *Protection of the Environment Operations Act 1997* to provide for the investigation of those complaints by the Ombudsman and Environment Protection Authority, respectively.

Extension of circumstances in which disclosures to members of Parliament or journalists will be protected

Schedule 1 [32] extends the circumstances in which a person can make a protected disclosure to a member of Parliament or journalist. The amended provision will also provide protection where a disclosure is made directly to a member of Parliament or journalist in circumstances where there is significant risk of detrimental action to the person making the disclosure if a disclosure is made as elsewhere provided by the Act and where it would be unreasonable in all the circumstances for the person to make a disclosure to another person under the Act, which is currently a requirement if such a disclosure is to be protected.

Schedule 1 [21] makes a consequential amendment.

Extension of protections from detrimental action taken or threatened in reprisal for making a protected disclosure

Schedule 1 [33] extends the existing offence for taking detrimental action against a person substantially in reprisal for the person making a public interest disclosure so that it also applies if reprisal for the disclosure was one of several reasons for taking detrimental action, that is, even if it was not the main reason. The amendment also extends the offence to include threatening detrimental action.

Schedule 1 [34] extends the existing provision about taking disciplinary action against a public official for taking detrimental action against a person substantially in reprisal for the person making a public interest disclosure so that it also applies if reprisal for the disclosure was one of the reasons for taking or threatening detrimental action in reprisal, that is, even if it was not the main reason. The amendment also extends the provision to include disciplinary action for threatening detrimental action.

Schedule 1 [5] moves the definition of *detrimental action*, so that it applies more broadly to the whole Act.

Schedule 1 [31] and [36] make amendments that are consequential on the fact that the prohibitions on taking or threatening detrimental action will apply even if the disclosure was not the main reason for detrimental action being taken or threatened.

Extension of right to compensation for loss, damage or injury arising from detrimental action taken or threatened in reprisal for making a protected disclosure

Schedule 1 [35] allows civil remedies to be pursued in the Industrial Relations Commission rather than other civil courts for loss, damage or injury suffered as a result of detrimental action taken or threatened in reprisal, or partly in reprisal, for the making of a public interest disclosure (and not only when the disclosure was substantially in reprisal for the taking of the detrimental action in reprisal, as at present).

Savings and transitional provisions

Schedule 1 [41] inserts savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other legislation

Amendment of Defamation Act 2005 No 77

Schedule 2.1 [1] is consequential on the amendment made by Schedule 1 [18], extending protections to public interest disclosures made by all persons (not only public officials).

Schedule 2.1 [2] is consequential on the amendments made by Schedule 1 [4] and other provisions of Schedule 1 that extend protections in relation to public interest disclosures to those about scientific misconduct (by extending the definition of *corrupt conduct*).

Amendment of Education (School Administrative and Support Staff) Act 1987 No 240

Schedule 2.2 is consequential on the amendments made by Schedule 1 [33] and [34] that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

Amendment of Government Sector Employment Act 2013 No 40

Schedule 2.3 is consequential on the amendments made by Schedule 1 [33] and [34] that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

Amendment of Health Services Regulation 2013

Schedule 2.4 is consequential on the amendments made by Schedule 1 [33] and [34] that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

Amendment of Independent Commission Against Corruption Act 1988 No 35

Schedule 2.5 [1] makes it clear that corrupt conduct includes scientific misconduct.

Schedule 2.5 [2] is consequential on the amendments made by Schedule 1 [18] and [23] that any person, and not only a public official, can be protected in relation to a public interest disclosure about the conduct of the Independent Commission Against Corruption, an officer or former officer of the Commission or an officer of the Inspector of the Independent Commission Against Corruption.

Amendment of Industrial Relations Act 1996 No 17

Schedule 2.6 [1] is consequential on the amendments made by Schedule 1 [33] and [34] that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

Schedule 2.6 [2] is consequential on the amendments made by Schedule 1 [33] and [34] and confers jurisdiction on the Industrial Relations Commission in Court Session to hear proceedings under section 20A of the *Public Interest Disclosures Act 1994* (as proposed to be amended by Schedule 1 [35]).

Amendment of Local Government Act 1993 No 30

Schedule 2.7 is consequential on the amendments made by Schedule 1 [18] and [23] that any person, and not only a public official, can be protected in relation to a public interest disclosure about certain local government matters.

Amendment of Ombudsman Act 1974 No 68

Schedule 2.8 provides for the making of complaints about risks to public health and safety to the Ombudsman and for the investigation of those complaints.

Amendment of Police Act 1990 No 47

Schedule 2.9 is consequential on the amendments made by Schedule 1 [33] and [34] that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

Amendment of Police Integrity Commission Act 1996 No 28

Schedule 2.10 is consequential on the amendments made by Schedule 1 [33] and [34] that prohibit detrimental action even if it is not taken substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

Amendment of Protection of the Environment Operations Act 1997 No 156

Schedule 2.11 provides for the making of complaints about risks to the environment to the Environment Protection Authority and for the investigation of those complaints.

Amendment of Public Finance and Audit Act 1983 No 152

Schedule 2.12 is consequential on the amendment made by Schedule 1 [18] and [23] that any person, and not only a public official, can be protected in relation to a public interest disclosure concerning serious and substantial waste of public money.

Amendment of Public Sector Employment and Management Act 2002 No 43

Schedule 2.13 is consequential on the amendments made by Schedule 1 [33] and [34] that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.

Amendment of Teaching Service Act 1980 No 23

Schedule 2.14 is consequential on the amendments made by Schedule 1 [33] and [34] that prohibit detrimental action even if it is not taken or threatened substantially in reprisal for making a public interest disclosure, but in circumstances where reprisal for making the disclosure is one of the reasons for taking or threatening the detrimental action.